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FM SECSTATE WASHDC
EUROPEAN POLAD COLLECTIVE PRIORITY
INFO SECDEF WASHDC//USDP:DSCA//DIA// PRIORITY 0000
JOINT STAFF WASHDC PRIORITY 0000
USCINCSOC MACDILL AFB FL PRIORITY
USCINCSO MIAMI FL PRIORITY
USCENTCOM MACDILL AFB FL PRIORITY
USCINCEUR VAIHINGEN GE PRIORITY
USCINCPAC HONOLULU HI PRIORITY
CIA WASHDC PRIORITY 0000
DIRNSA FT GEORGE G MEADE MD PRIORITY 0000
TREASURY DEPT WASHDC PRIORITY 0000

UNCLAS STATE 034981

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E.O. 12958: N/A

TAGS: [MASS PREL](#) [PHUM PINS](#) [PINR](#)

SUBJECT: REVISED GUIDANCE REGARDING LEAHY AMENDMENTS AND
U.S. FOREIGN ASSISTANCE

REF: (A) 99 STATE 103806, (B) 99 STATE 085337

¶1. THIS TASKER HAS BEEN CLEARED BY HR/RMA/CSEP FOR SEP
POSTS. THIS IS AN ACTION CABLE - SEE PARAGRAPHS 8-13 FOR
DETAILS.

SUMMARY.

¶2. (A) THIS CABLE REPRESENTS A REVISION OF PREVIOUS
GUIDANCE (REFS A AND B) CONCERNING IMPLEMENTATION OF STATE
AND DEFENSE STATUTORY PROVISIONS RELATED TO PROVIDING U.S.
UNCLASSIFIED

PAGE 03 STATE 034981 061828Z
FUNDS TO, AND TRAINING OF, UNITS OF FOREIGN SECURITY
FORCES (THE "LEAHY AMENDMENTS").

(B) THIS ACTION CABLE DOES NOT GRANT A "CLEAN SLATE" TO
UNITS IN CASES WHERE IT HAS PREVIOUSLY BEEN CONCLUDED THAT
THERE IS CREDIBLE EVIDENCE THAT UNITS HAVE COMMITTED GROSS
VIOLATIONS OF HUMAN RIGHTS, OR A CLEAN SLATE FOR PREVIOUS
ACTIONS BY UNITS FOR WHICH A DETERMINATION HAS NOT YET
BEEN MADE. ANY UNIT THAT THE DEPARTMENT HAS ALREADY
IDENTIFIED AS INELIGIBLE, SHALL REMAIN INELIGIBLE FOR
FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING UNTIL
FURTHER DECISION. INFORMATION THAT COULD BE DEEMED
CREDIBLE EVIDENCE OF A GROSS VIOLATION OF HUMAN RIGHTS BY
A SECURITY FORCE UNIT, REGARDLESS OF THE PASSAGE OF TIME,
WILL BE REPORTED BY POST AND WILL BE ADDRESSED IN
ACCORDANCE WITH THE INSTRUCTIONS PROVIDED IN THIS ACTION
CABLE.

(C) THE MOST RECENT VERSION OF THE "STATE LEAHY
AMENDMENT," SECTION 556 OF THE FY 2002 FOREIGN OPERATIONS,
EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT
(FOAA), PROVIDES THAT NONE OF THE FUNDS MADE AVAILABLE BY
THAT ACT MAY BE PROVIDED TO ANY UNIT OF A FOREIGN
COUNTRY'S SECURITY FORCES IF THE SECRETARY OF STATE HAS
CREDIBLE EVIDENCE THAT SUCH UNIT HAS COMMITTED GROSS HUMAN
RIGHTS VIOLATIONS, UNLESS CERTAIN CONDITIONS HAVE BEEN
MET. THE MOST RECENT VERSION OF THE "DOD LEAHY
AMENDMENT," SECTION 8080 OF THE FY 2003 DOD APPROPRIATIONS
ACT, CONTAINS A SIMILAR PROVISION REGARDING DOD-FUNDED
TRAINING PROGRAMS.

UNCLASSIFIED

PAGE 04 STATE 034981 061828Z

(D) PARAGRAPHS 8-13 PROVIDE REVISED GUIDANCE ON
IMPLEMENTING THESE TWO PROVISIONS. IN IMPLEMENTING THE
LAW, THIS ACTION CABLE REQUIRES POSTS TO REPORT TO THE
DEPARTMENT OF STATE ANY INFORMATION THAT COULD REASONABLY
BE DEEMED TO BE CREDIBLE INFORMATION OF A GROSS VIOLATION
OF HUMAN RIGHTS BY HOST NATION SECURITY FORCES RECEIVING
OR SLATED TO RECEIVE FOAA-FUNDED ASSISTANCE OR INVOLVED IN

DOD-FUNDED TRAINING. REPORTS OF INCIDENTS WILL NOT RESULT IN AUTOMATIC TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING, BUT WILL TRIGGER A DEPARTMENTAL REVIEW THAT COULD RESULT IN A RECOMMENDATION TO TERMINATE FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING. IF THE DEPARTMENT DETERMINES THAT THESE REPORTS CONSTITUTE CREDIBLE EVIDENCE OF GROSS VIOLATIONS OF HUMAN RIGHTS BY A UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES AND THAT CERTAIN CONDITIONS HAVE NOT BEEN MET, DEPARTMENT WILL GENERALLY ADVISE POST TO DELIVER A DEMARCHE TO THE HOST GOVERNMENT NOTIFYING IT OF THE INCIDENT(S), IDENTIFYING THE UNIT(S) INVOLVED, AND ADVISING THE HOST GOVERNMENT OF RESTRICTIONS ON DOD-FUNDED TRAINING OR FOAA-FUNDED ASSISTANCE FOR THOSE UNITS.

BACKGROUND.

13. THE FIRST FORM OF THE STATE LEAHY AMENDMENT APPEARED IN THE FY 1997 FOAA. AT THAT TIME IT APPLIED ONLY TO INTERNATIONAL NARCOTICS CONTROL (INC) FUNDING. BEGINNING IN FY 1998 A SIMILAR PROVISION WAS ENACTED WHICH AFFECTED ALL FUNDS APPROPRIATED UNDER THE FOAA - NOT JUST COUNTERNARCOTICS FUNDS - AND SINCE THAT TIME VERSIONS OF THE PROVISION HAVE BEEN INCLUDED ANNUALLY.

UNCLASSIFIED

PAGE 05 STATE 034981 061828Z

14. STATE LEAHY PROVISION: THE CURRENT VERSION OF THE STATE LEAHY AMENDMENT, SECTION 556 OF THE FY 2002 FOAA, READS AS FOLLOWS:

BEGIN TEXT: NONE OF THE FUNDS MADE AVAILABLE BY THIS ACT MAY BE PROVIDED TO ANY UNIT OF THE SECURITY FORCES OF A FOREIGN COUNTRY IF THE SECRETARY OF STATE HAS CREDIBLE EVIDENCE THAT SUCH UNIT HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS, UNLESS THE SECRETARY DETERMINES AND REPORTS TO THE COMMITTEES ON APPROPRIATIONS THAT THE GOVERNMENT OF SUCH COUNTRY IS TAKING EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBERS OF THE SECURITY FORCES UNIT TO JUSTICE: PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO WITHHOLD FUNDS MADE AVAILABLE BY THIS ACT FROM ANY UNIT OF THE SECURITY FORCES OF A FOREIGN COUNTRY NOT CREDIBLY ALLEGED TO BE INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS; PROVIDED FURTHER, THAT IN THE EVENT THAT FUNDS ARE WITHHELD FROM ANY UNIT PURSUANT TO THIS SECTION, THE SECRETARY OF STATE SHALL PROMPTLY INFORM THE FOREIGN GOVERNMENT OF THE BASIS FOR SUCH ACTION AND SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, ASSIST THE FOREIGN GOVERNMENT IN TAKING EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBERS OF THE SECURITY FORCES TO JUSTICE. END TEXT.

15. THE FIRST FORM OF THE DOD LEAHY PROVISION APPEARED IN SECTION 8130 OF THE FY 1999 DEFENSE APPROPRIATIONS ACT WHICH PROHIBITED DOD-FUNDED TRAINING PROGRAMS INVOLVING A UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES "IF THE SECRETARY OF DEFENSE HAS RECEIVED CREDIBLE INFORMATION

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FROM THE DEPARTMENT OF STATE THAT A MEMBER OF SUCH UNIT
UNCLASSIFIED

PAGE 06 STATE 034981 061828Z
HAS COMMITTED A GROSS VIOLATION OF HUMAN RIGHTS..." UNLESS CERTAIN CONDITIONS HAVE BEEN MET. BEGINNING IN THE FY 2000 DOD APPROPRIATIONS ACT, HOWEVER, THE CLAUSE "A MEMBER OF SUCH UNIT" WAS DELETED. SINCE FY 2000, THE DOD LEAHY PROVISION, LIKE THE STATE LEAHY PROVISION, HAS REFERRED TO CREDIBLE INFORMATION ABOUT SECURITY FORCE UNITS, RATHER THAN MEMBERS OF SUCH UNITS.

16. DOD LEAHY PROVISION: THE CURRENT VERSION OF THE DOD LEAHY AMENDMENT, SECTION 8080 OF THE FY 2003 DOD APPROPRIATIONS ACT, READS AS FOLLOWS:

BEGIN TEXT: (A) PROHIBITION - NONE OF THE FUNDS MADE AVAILABLE BY THIS ACT MAY BE USED TO SUPPORT ANY TRAINING PROGRAM INVOLVING A UNIT OF THE SECURITY FORCES OF A

FOREIGN COUNTRY IF THE SECRETARY OF DEFENSE HAS RECEIVED CREDIBLE INFORMATION FROM THE DEPARTMENT OF STATE THAT THE UNIT HAS COMMITTED A GROSS VIOLATION OF HUMAN RIGHTS, UNLESS ALL NECESSARY CORRECTIVE STEPS HAVE BEEN TAKEN.

(B) MONITORING - THE SECRETARY OF DEFENSE, IN CONSULTATION WITH THE SECRETARY OF STATE, SHALL ENSURE THAT PRIOR TO A DECISION TO CONDUCT ANY TRAINING PROGRAM REFERRED TO IN SUBSECTION (A), FULL CONSIDERATION IS GIVEN TO ALL CREDIBLE INFORMATION AVAILABLE TO THE DEPARTMENT OF STATE RELATING TO HUMAN RIGHTS VIOLATIONS BY FOREIGN SECURITY FORCES.

(C) WAIVER - THE SECRETARY OF DEFENSE, AFTER CONSULTATION WITH THE SECRETARY OF STATE, MAY WAIVE THE PROHIBITION IN SUBSECTION (A) IF HE DETERMINES THAT SUCH WAIVER IS
UNCLASSIFIED

PAGE 07 STATE 034981 061828Z
REQUIRED BY EXTRAORDINARY CIRCUMSTANCES.

(D) REPORT - NOT MORE THAN 15 DAYS AFTER THE EXERCISE OF ANY WAIVER UNDER SUBSECTION (C), THE SECRETARY OF DEFENSE SHALL SUBMIT A REPORT TO THE CONGRESSIONAL DEFENSE COMMITTEES DESCRIBING THE EXTRAORDINARY CIRCUMSTANCES, THE PURPOSE AND DURATION OF THE TRAINING PROGRAM, THE UNITED STATES FORCES AND THE FOREIGN SECURITY FORCES INVOLVED IN THE TRAINING PROGRAM, AND THE INFORMATION RELATING TO HUMAN RIGHTS VIOLATIONS THAT NECESSITATES THE WAIVER. END TEXT.

17. THE STATE DEPARTMENT LEAHY PROVISION APPLIES TO ALL ASSISTANCE PROGRAMS FUNDED BY THE ANNUAL FOAA. PROGRAMS FUNDED BY FOREIGN MILITARY FINANCING (FMF) GRANTS AND LOANS, INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT (INCLE) FUNDS, INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) FUNDS AND PEACEKEEPING OPERATIONS (PKO) FUNDS AND CERTAIN NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS (NADR) FUNDS - E.G., ANTI-TERRORISM ASSISTANCE ARE OFTEN ORIENTED TO SECURITY FORCES. OTHER ASSISTANCE PROGRAMS FUNDED, E.G., BY ECONOMIC SUPPORT FUNDS (ESF), FREEDOM SUPPORT ACT (FSA) FUNDS, ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES (AEEB AKA SEED) FUNDS, AND DEVELOPMENT ASSISTANCE (DA) FUNDS AND CERTAIN PROGRAMS FUNDED BY THE NADR ACCOUNT (E.G., DEMINING ASSISTANCE) TYPICALLY DO NOT INVOLVE SECURITY FORCES, ALTHOUGH CERTAIN COUNTRIES' SECURITY FORCES MAY RECEIVE THESE TYPES OF ASSISTANCE. ASSISTANCE PROGRAMS TAKE A WIDE ARRAY OF FORMS, INCLUDING: PROVISION OF COMMODITIES, EQUIPMENT, OR OTHER GOODS; TRAINING AND
UNCLASSIFIED

PAGE 08 STATE 034981 061828Z
EDUCATION PROGRAMS FOR GROUPS AND INDIVIDUALS; SUPPORT SERVICES, SUCH AS TRANSPORTATION, LOGISTICS, MAINTENANCE OF EQUIPMENT, AND CONFERENCE ATTENDANCE OR SUPPORT; GRANTS OR LOANS TO PROCURE GOODS AND SERVICES IN SUPPORT OF SECURITY FORCES; AND CASH TRANSFERS OF FUNDS. THE STATE LEAHY AMENDMENT APPLIES TO THESE AND ALL OTHER FORMS OF ASSISTANCE USING FOAA-APPROPRIATED FUNDS IN ALL COUNTRIES TO WHICH THE U.S. PROVIDES SUCH ASSISTANCE. (NOTE: THE EXPORT-IMPORT BANK (EX-IM) HAS ADVISED THE DEPARTMENT THAT IT TAKES THE POSITION THAT IN THE CASE OF PURCHASES BY SECURITY FORCES, THE LEAHY AMENDMENT APPLIES TO ITS LOAN AND GUARANTEE PROGRAMS. ACCORDINGLY, HOST COUNTRY PROGRAMS THAT WILL BENEFIT FROM OR RECEIVE EX-IM SUPPORT SHOULD BE EVALUATED IN THE SAME MANNER AS THE FOAA-FUNDED PROGRAMS DESCRIBED IN THIS CABLE IF THEY INVOLVE PROVISION OF SUPPORT TO SECURITY FORCES.)

18. THE DOD LEAHY PROVISION APPLIES TO USE OF FUNDS MADE AVAILABLE UNDER THE ANNUAL DOD APPROPRIATIONS ACTS. EXAMPLES OF TRAINING PROGRAMS FUNDED WITH DOD FUNDS ARE LISTED IN PARAGRAPH 19.

19. PRIOR-YEAR ASSISTANCE: POSTS SHOULD FOLLOW PROCEDURES DETAILED HEREIN WITH REGARD TO USE OF ANY PREVIOUS YEARS' FOAA FUNDS OR ANY TRAINING USING PRIOR YEARS' DOD FUNDS

THAT MAY BE PROVIDED TO HOST NATION SECURITY FORCES.

¶10. THE RESTRICTIONS OF THE FOAA AND THE DEFENSE APPROPRIATIONS ACT VERSIONS OF THE LEAHY AMENDMENT ARE SIMILAR. AFTER CAREFUL REVIEW WITHIN THE DEPARTMENT OF STATE AND DEPARTMENT OF DEFENSE, THIS CABLE: (A) SETS UNCLASSIFIED

PAGE 09 STATE 034981 061828Z
FORTH A PROCESS FOR IMPLEMENTING BOTH THE STATE AND DOD LEAHY AMENDMENTS; AND (B) ESTABLISHES A STRONGER RELATIONSHIP BETWEEN U.S. ASSISTANCE AND OBSERVANCE BY RECIPIENT NATION SECURITY FORCES OF INTERNATIONALLY ACCEPTED HUMAN RIGHTS STANDARDS.

¶11. AS POSTS REVIEW AND IMPLEMENT GUIDANCE DETAILED BELOW, THEY SHOULD KEEP IN MIND TWO OVERRIDING POLICY CONCERNS:

(A) U.S. ASSISTANCE PROVIDED UNDER THE FOAA - WHETHER IN THE FORM OF FUNDS, OTHER ASSISTANCE, OR TRAINING - SHOULD NOT BE PROVIDED TO UNITS OF FOREIGN SECURITY FORCES THAT HAVE ENGAGED IN GROSS VIOLATIONS OF HUMAN RIGHTS, AND DOD FUNDING SHOULD NOT BE PROVIDED FOR TRAINING INVOLVING SUCH UNITS; AND

(B) THE UNITED STATES SHOULD SEEK WAYS TO LEVERAGE ITS ASSISTANCE AND TRAINING TO ENCOURAGE HOST NATION GOVERNMENTS TO PREVENT SUCH VIOLATIONS AND TO HOLD PERSONS CREDIBLY BELIEVED TO BE RESPONSIBLE FOR SUCH VIOLATIONS ACCOUNTABLE FOR THEIR ACTIONS, INCLUDING BY BRINGING SUCH PERSONS TO JUSTICE.

POSTS SHOULD ALSO NOTE THAT DOD DOES EXECUTE OR IS INVOLVED IN MANY OF THE FOAA-SPONSORED PROGRAMS TO WHICH THE STATE LEAHY PROVISION APPLIES (E.G., CERTAIN PROGRAMS FUNDED WITH FMF, IMET, INC, PKO, OR NADR FUNDS). COUNTRY TEAM WILL NEED TO COORDINATE ACCORDINGLY TO ENSURE THAT THE CORRECT STATUTORY PROVISION (EITHER SECTION 556 OR SECTION 8080) IS APPLIED IN ANY RELEVANT INSTANCES IN UNCLASSIFIED

PAGE 10 STATE 034981 061828Z
WHICH THE DEPARTMENT HAS CREDIBLE INFORMATION OF GROSS VIOLATIONS OF HUMAN RIGHTS BY ANY UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES. THE LEAHY AMENDMENTS DO NOT/NOT APPLY EITHER TO FMS SALES, OR TO ISSUANCE OF LICENSES FOR COMMERCIAL MUNITIONS EXPORTS, WHEN THESE ARE NOT FUNDED BY U.S. SECURITY ASSISTANCE.

ACTION.

INCIDENT-RELATED REPORTING REQUIREMENTS.

¶12. POSTS IN COUNTRIES THAT RECEIVE FOAA-FUNDED ASSISTANCE OR IN COUNTRIES WHERE UNITS OF FOREIGN SECURITY FORCES ARE INVOLVED IN DOD TRAINING ARE REQUIRED TO HAVE PROCEDURES IN PLACE TO IMPLEMENT THE LEAHY AMENDMENTS. DEPARTMENT PROVIDED GUIDANCE FOR IMPLEMENTING THE LEAHY AMENDMENTS IN 1998 AND 1999. THE INSTRUCTIONS CONTAINED IN THIS CABLE REPLACE THIS PREVIOUS GUIDANCE. POSTS SHOULD REVIEW THEIR PROCEDURES AND ENSURE THEY ARE CONSISTENT WITH CURRENT REQUIREMENTS, AS SET FORTH BELOW.

¶13. ANY TIME THROUGHOUT THE YEAR THAT A POST BECOMES AWARE OF ANY INFORMATION REGARDING INCIDENTS WHICH REASONABLY COULD BE DEEMED TO BE CREDIBLE INFORMATION OF A GROSS VIOLATION OF HUMAN RIGHTS BY ANY UNIT OF THE HOST NATION'S SECURITY FORCES RECEIVING OR PROPOSED TO RECEIVE FOAA-FUNDED ASSISTANCE OR INVOLVED IN DOD-FUNDED TRAINING, AND REGARDLESS OF THE SOURCE OF SUCH INFORMATION (E.G., STATE, DOD, DAOS/SAOS, OTHER POSTS, NGOS, MEDIA REPORTS, ETC.), POST SHOULD SO INFORM THE DEPARTMENT BY CABLE. POST SHOULD DRAW ON THE EXPERTISE OF DAOS/SAOS IN UNCLASSIFIED

PAGE 11 STATE 034981 061828Z
REPORTING SUCH INFORMATION. POST SHOULD, TO THE EXTENT

PRACTICABLE, IDENTIFY THE UNIT THAT HAS ALLEGEDLY COMMITTED THE VIOLATION OF HUMAN RIGHTS AND INCLUDE POST'S VIEW AS TO WHETHER THE VIOLATION OF HUMAN RIGHTS RISES TO THE LEVEL OF BEING A GROSS VIOLATION AND WHETHER IT BELIEVES THE INFORMATION IS CREDIBLE. CABLES SHOULD BE SLUGGED ACTION FOR THE APPROPRIATE REGIONAL BUREAU, WITH PM, DRL, H, INR, L, INL, AND OTHER STATE AND DEFENSE DEPARTMENT BUREAUS AND OTHER U.S. AGENCIES, AS APPROPRIATE, SLUGGED FOR INFO. REPORTS OF INCIDENTS WHICH COULD BE DEEMED GROSS VIOLATIONS WILL NOT RESULT IN AUTOMATIC TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING, BUT WILL TRIGGER A REVIEW BY REGIONAL BUREAUS, PM, DRL AND OTHERS, AS APPROPRIATE, WHICH COULD RESULT IN A RECOMMENDATION TO TERMINATE FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING.

¶14. REGIONAL BUREAUS ARE RESPONSIBLE FOR COORDINATING THE DEPARTMENT'S RESPONSE TO REPORTS OF INCIDENTS UNDER PARAGRAPH 13. IN CASES WHERE THE DEPARTMENT, AFTER CONSIDERING THE POSITIONS OF THE REGIONAL BUREAUS, DRL, PM AND OTHER RELEVANT BUREAUS, DETERMINES THERE IS A NEED FOR FURTHER REVIEW, THE REGIONAL BUREAU WILL SO ADVISE POST AND WILL MOVE TO RESOLVE QUESTIONS OR CONCERNS ON A CASE-BY-CASE BASIS AND, AS APPROPRIATE, WITH DOD OR OTHER RELEVANT AGENCIES.

¶15. IF ANY CONCERNED BUREAU BELIEVES THERE IS IN FACT CREDIBLE EVIDENCE THAT A SPECIFIC UNIT OR UNITS RECEIVING FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING HAS COMMITTED A GROSS VIOLATION OR GROSS VIOLATIONS OF HUMAN
UNCLASSIFIED

PAGE 12 STATE 034981 061828Z
RIGHTS, A MEMORANDUM SHALL BE PREPARED FOR DECISION BY THE SECRETARY. IN ANY CASE WHERE THE SECRETARY DETERMINES

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THAT THERE IS CREDIBLE EVIDENCE OF SUCH VIOLATION OR VIOLATIONS OF HUMAN RIGHTS BY ANY UNIT OR UNITS OF A FOREIGN COUNTRY'S SECURITY FORCES RECEIVING FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING, THE REGIONAL BUREAU WILL GENERALLY ADVISE POST TO DELIVER A DEMARCHE TO THE HOST GOVERNMENT NOTIFYING IT OF THE INCIDENT(S), IDENTIFYING THE UNIT(S) INVOLVED, AND (WHERE APPLICABLE) ADVISING THE HOST GOVERNMENT OF ANY RESTRICTIONS ON DOD-FUNDED TRAINING OR FOAA-FUNDED ASSISTANCE THAT WILL APPLY WITH RESPECT TO SUCH UNIT(S). IN SUCH CASES, DEPARTMENT MAY TAKE SUCH ACTIONS AS: REQUIRING ADDITIONAL CONDITIONS IN FUTURE AGREEMENTS UNDER WHICH ASSISTANCE IS PROVIDED (INCLUDING, E.G., REVISING LOAS TO INCLUDE LANGUAGE REQUIRING RECIPIENT GOVERNMENTS NOT TO TRANSFER FMF-ORIGIN DEFENSE ITEMS TO OFFENDING UNITS); NOTIFYING CONGRESS OF THE COUNTRY'S FAILURE TO TAKE CORRECTIVE ACTION; OR EVEN TERMINATING SECURITY ASSISTANCE TO THE COUNTRY. PLEASE NOTE THAT NOTHING IN THESE PROCEDURES OR THIS ACTION CABLE SUPERCEDES THE PROCESS FOR CASE-BY-CASE APPROVAL AND VETTING AS PERFORMED BY REGIONAL BUREAUS, DRL, PM AND OTHER RELEVANT BUREAUS WITH INR'S SUPPORT WHEN DOD IS VETTING UNITS OR INDIVIDUALS FOR TRAINING.

¶16. DEPENDING ON CIRCUMSTANCES, DEPARTMENT MAY DIRECT POSTS TO DEMARCHE HOST GOVERNMENTS EVEN IN CASES WHERE EVIDENCE IS NOT DEEMED SUFFICIENT TO SUPPORT A TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING BUT WHERE THE CAUSE OF HUMAN RIGHTS COULD BE ADVANCED. FOR EXAMPLE, POST MIGHT BE ADVISED TO REMIND THE COUNTRY IN QUESTION OF
UNCLASSIFIED

PAGE 13 STATE 034981 061828Z
THE REQUIREMENTS OF THE RELEVANT LEAHY AMENDMENT AND THE FACT THAT LEAHY VIOLATIONS MAY RESULT IN THE TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING.

APPORTIONMENT AND FUNDING REQUEST REQUIREMENTS.

¶17. BUREAUS SHALL INCLUDE IN ALL REQUESTS FOR PROGRAM FUNDS (E.G., VIA ALLOCATION MEMORANDA OR APPORTIONMENT REQUESTS) WITH RESPECT TO ESF, FMF, PKO, IMET, NADR AND

ALL OTHER FOAA-FUNDED ASSISTANCE TO BE PROVIDED TO SECURITY FORCES OF A FOREIGN COUNTRY, A STATEMENT INDICATING THAT THE APPROPRIATE REGIONAL BUREAU IS NOT AWARE OF CREDIBLE EVIDENCE OF GROSS VIOLATIONS OF HUMAN RIGHTS BY ANY SECURITY FORCE UNITS RECEIVING ASSISTANCE IN THE PARTICULAR COUNTRY OR COUNTRIES TO WHICH THE ASSISTANCE WOULD BE PROVIDED. FOR COUNTRIES WHERE THE DEPARTMENT HAS DETERMINED THAT CREDIBLE EVIDENCE EXISTS THAT SUCH UNIT RECEIVING OR PROJECTED TO RECEIVE ASSISTANCE HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS, REGIONAL BUREAU SHALL INCLUDE IN ITS REQUEST WHAT EFFECTIVE MEASURES THAT COUNTRY IS TAKING TO BRING RESPONSIBLE MEMBERS OF THE SECURITY FORCES UNIT TO JUSTICE IN ACCORDANCE WITH THE LEAHY AMENDMENT (IN CASES INVOLVING DOD TRAINING, WHETHER AND WHAT CORRECTIVE STEPS HAVE BEEN TAKEN) AND OTHER RELEVANT INFORMATION (E.G., ASSURANCES THE COUNTRY MAY HAVE PROVIDED THAT U.S. ASSISTANCE WILL NOT BE PROVIDED TO THAT UNIT).

¶18. THE DEPARTMENT IS CURRENTLY EXPLORING THE POSSIBILITY OF ESTABLISHING A "NAME CHECK" UNIT IN INR THAT WOULD RUN QUERIES AGAINST INR'S ELECTRONIC DATABASES TO IDENTIFY
UNCLASSIFIED

PAGE 14 STATE 034981 061828Z
REPORTS ON SPECIFIC INDIVIDUALS OR ENTITIES. IF THE UNIT IS ESTABLISHED, INR WOULD PROVIDE RELEVANT MATERIALS TO THE BUREAUS RESPONSIBLE FOR MAKING A DETERMINATION OF ELIGIBILITY. IF THE UNIT IS NOT ESTABLISHED, INR WILL HELP AS IT CAN BUT WILL NOT BE ABLE TO CHECK MORE THAN A FEW NAMES AT A TIME.

DISCUSSION AND DEFINITIONS.

¶19. AS A MATTER OF LONGSTANDING POLICY, THE U.S. GOVERNMENT REQUIRES THAT CANDIDATES FOR ALL U.S.-SPONSORED TRAINING BE EVALUATED BY POSTS FOR A NUMBER OF DISQUALIFYING FACTORS. TRAINING REQUESTS WILL CONTINUE TO BE VETTED ON A CASE-BY-CASE BASIS. IF TRAINING IS SCHEDULED FOR UNITS, (E.G., MOBILE TRAINING TEAMS (MTTS) AND MOBILE EDUCATION TEAMS (METS)), POST IS NOT REQUIRED TO SCREEN EACH MEMBER OF THE UNIT(S) SCHEDULED FOR TRAINING. INSTEAD, POST SHOULD REVIEW THE HUMAN RIGHTS RECORD OF THE UNIT AS A WHOLE. IN CASES WHERE TRAINING IS SCHEDULED FOR AN INDIVIDUAL, IT CAN PROCEED IF THERE IS NO CREDIBLE EVIDENCE THAT THE INDIVIDUAL HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS. (OF COURSE, POST RETAINS THE AUTHORITY TO DENY APPROVAL FOR TRAINING TO A CANDIDATE WHO DOES NOT PASS OTHER FACTORS OF THE SCREENING PROCESS, SUCH AS DRUG TRAFFICKING, CORRUPTION, HEALTH, CRIMINAL ACTIVITY, AND ACTIVITIES THAT ARE INCONSISTENT WITH U.S. FOREIGN POLICY GOALS.)

¶20. ACTIVITIES COVERED UNDER THE DOD LEAHY PROVISIONS INCLUDE ALL DOD-FUNDED TRAINING PROGRAMS SUCH AS JOINT COMBINED EXCHANGES FOR TRAINING (JCETS), COUNTERNARCOTICS
UNCLASSIFIED

PAGE 15 STATE 034981 061828Z
TRAINING, COMBATANT COMMANDERS INITIATIVE FUND, AND THE DOD REGIONAL COUNTERTERRORISM FELLOWSHIP TRAINING PROGRAM.

¶21. UNIT OF THE SECURITY FORCES: THE PHRASE "UNIT OF THE SECURITY FORCES" IS NOT DEFINED IN THE LEGISLATION, BUT SHOULD BE APPLIED FOR THE PURPOSES OUTLINED IN THIS CABLE TO INCLUDE ORGANIZATIONAL UNITS OF MILITARY, POLICE, OR ANY OTHER SECURITY FORCES. THE LEAHY AMENDMENTS DO NOT/NOT APPLY TO THE WHOLE OF A FOREIGN GOVERNMENT'S MILITARY, POLICE, OR OTHER SECURITY FORCES, BUT RATHER TO THE SPECIFIC COMPONENT UNITS RECEIVING TRAINING OR ASSISTANCE. THE QUESTION OF WHAT LEVEL OR ENTITY CONSTITUTES A "UNIT" FOR THE PURPOSES OF THE LEAHY AMENDMENTS WILL BE DETERMINED ON A CASE-BY-CASE BASIS. THE SENATE REPORT ACCOMPANYING THE FY 2002 FOAA PROVIDES THAT THE TERM "UNIT" IS TO BE "CONSTRUED AS THE SMALLEST OPERATIONAL GROUP IN THE FIELD THAT HAS BEEN IMPLICATED IN THE REPORTED VIOLATION." AS A GENERAL RULE OF THUMB, POST SHOULD CONSIDER THE LOWEST ORGANIZATIONAL ELEMENT OF A

SECURITY FORCE CAPABLE OF EXERCISING COMMAND AND DISCIPLINE OVER ITS MEMBERS. IN DETERMINING THE ENTITY TO BE VETTED WITH RESPECT TO MILITARY, POLICE, OR PARAMILITARY FORCES, POST SHOULD TAKE INTO ACCOUNT THE PURPOSE OF THE FORCE, ITS UNIQUE COMMAND STRUCTURE AS WELL AS THE SPECIFIC ALLEGATIONS AT ISSUE. INABILITY TO IDENTIFY A PARTICULAR INDIVIDUAL AS A PERPETRATOR WOULD NOT PRECLUDE A CONCLUSION THAT THE UNIT HAS COMMITTED A GROSS VIOLATIONS OF HUMAN RIGHTS IF FACTS OTHERWISE JUSTIFY SUCH A CONCLUSION. POSTS SHOULD KEEP TRACK OF ALLEGATIONS OF GROSS VIOLATIONS OF HUMAN RIGHTS INVOLVING ANY UNIT OF THE SECURITY FORCES, REGARDLESS OF WHETHER

UNCLASSIFIED

PAGE 16 STATE 034981 061828Z
THAT UNIT IS CURRENTLY RECEIVING TRAINING OR ASSISTANCE.

¶22. GROSS VIOLATIONS OF HUMAN RIGHTS: ALTHOUGH THE TERM "GROSS VIOLATIONS OF HUMAN RIGHTS" IS NOT DEFINED IN THESE PROVISIONS, A SIMILAR TERM IS DEFINED IN SECTION 502B(D) OF THE FOREIGN ASSISTANCE ACT (FAA), AND POSTS SHOULD USE THAT DEFINITION AS A GUIDE: "THE TERM 'GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS' INCLUDES TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT, PROLONGED DETENTION WITHOUT CHARGES AND TRIAL, CAUSING THE DISAPPEARANCE OF PERSONS BY THE ABDUCTION AND CLANDESTINE DETENTION OF THOSE PERSONS, AND OTHER FLAGRANT DENIAL OF THE RIGHT TO LIFE, LIBERTY, OR THE SECURITY OF PERSON."

¶23. EXISTING REPORTING PROCEDURES FOR THE ANNUAL DRL HUMAN RIGHTS REPORT TO CONGRESS ARE UNCHANGED BY THIS ACTION CABLE: THE DEPARTMENT'S ESTABLISHED HUMAN RIGHTS REPORTING PROCEDURES REQUIRE POSTS TO REPORT ANNUALLY ON INSTANCES OF GROSS VIOLATIONS OF HUMAN RIGHTS KNOWN OR RELIABLY PRESUMED TO HAVE BEEN PERPETRATED BY OFFICIALS OR AGENCIES OF FOREIGN GOVERNMENTS. DEPARTMENT GUIDANCE FOR THIS ANNUAL REPORT DOES NOT ASK POSTS TO REPORT ALL HUMAN RIGHTS VIOLATIONS BY OFFICIALS OR AGENCIES OF FOREIGN GOVERNMENTS BUT RATHER A SAMPLING. HOWEVER, FOR THE PURPOSES OF LEAHY, POSTS ARE REQUIRED TO REPORT ANY INFORMATION REGARDING INCIDENTS WHICH REASONABLY COULD BE DEEMED TO BE CREDIBLE EVIDENCE OF GROSS VIOLATIONS BY ANY UNIT OF THE HOST NATION'S SECURITY FORCES RECEIVING FOAA-FUNDED ASSISTANCE OR INVOLVED IN DOD-FUNDED TRAINING, REGARDLESS OF THE SOURCE OF SUCH INFORMATION (E.G., STATE, DOD, DAOS/SAOS, OTHER POSTS, NGOS, MEDIA REPORTS, ETC.).

UNCLASSIFIED

PAGE 17 STATE 034981 061828Z
THE REQUIREMENT TO IMPLEMENT THE LEAHY AMENDMENTS MAKES IT PARTICULARLY IMPORTANT THAT POSTS BE ALERT AND REPORT PROMPTLY TO DEPARTMENT WHENEVER ANY RELEVANT INFORMATION BECOMES KNOWN TO POST.

¶24. CREDIBLE EVIDENCE: WHILE THE DEPARTMENT RETAINS AUTHORITY FOR ALL FINAL DECISIONS REGARDING SPECIFIC CASES - INCLUDING THE "CREDIBILITY" OF EVIDENCE OF GROSS VIOLATIONS - IT MUST RELY, AT LEAST IN THE FIRST INSTANCE, ON POST'S JUDGMENT IN REVIEWING AND ASSESSING AVAILABLE INFORMATION FOR ITS RELIABILITY AND THE CREDIBILITY OF ITS SOURCE. POST NEED NOT SUBMIT REPORTS THAT IT CONFIDENTLY BELIEVES TO BE UNFOUNDED. IF IN DOUBT ABOUT THE CREDIBILITY OF INFORMATION, POST SHOULD SUBMIT TO THE DEPARTMENT AND SO NOTE.

¶25. WITH REGARD TO THE MEANING OF "EVIDENCE," REPORT LANGUAGE ACCOMPANYING THE FY 1999 FOAA PROVIDES: "THE CONFEREES DO NOT INTEND THAT THE EVIDENCE MUST BE ADMISSIBLE IN A COURT OF LAW." HOWEVER, NEITHER THE LEGISLATION NOR ACCOMPANYING REPORT LANGUAGE DEFINES "CREDIBLE." POST SHOULD APPLY A RULE OF REASON IN INTERPRETING "CREDIBLE" IN VIEW OF THE OVERALL PURPOSE OF THE PROVISIONS, BEARING IN MIND THAT WHAT THE DEPARTMENT IS SEEKING IS INFORMATION DESERVING OF CONFIDENCE AS A BASIS FOR DECISION-MAKING. INFORMATION THAT CAN BE CORROBORATED THROUGH INDEPENDENT SOURCES STRENGTHENS THE CREDIBILITY OF SUCH REPORTS. NGOS CAN BE A VALUABLE SOURCE OF INFORMATION. WEIGHT TO BE ACCORDED PARTICULAR

REPORTS REQUIRES CAREFUL JUDGMENT AND MAY TURN ON
PARTICULAR CIRCUMSTANCES - E.G., THE RECORD OF THE
UNCLASSIFIED

PAGE 18 STATE 034981 061828Z
GOVERNMENTAL OR NON-GOVERNMENTAL GROUP FOR ACCURATE AND
IMPARTIAL REPORTING AND THE DEGREE OF DETAIL PROVIDED.
ALL EVIDENCE - BOTH SUPPORTING AND REFUTING - SHOULD BE
TAKEN AS A WHOLE IN ASSESSING WHETHER EVIDENCE IS
"CREDIBLE" WITHIN THE MEANING OF THE LEAHY AMENDMENTS.

¶26. PARTICULARLY DIFFICULT LEGAL AND POLICY ISSUES MAY
ARISE IN CASES WHERE A PERPETRATOR OF A GROSS HUMAN RIGHTS
VIOLATION HAS CHANGED UNITS, OR EVIDENCE IS NOT TIED
DIRECTLY TO SPECIFIC UNITS. IN ORDER TO IMPLEMENT THE
LEAHY AMENDMENTS AND RELATED STATE DEPARTMENT POLICY,
POSTS SHOULD IDENTIFY, TO THE EXTENT POSSIBLE, ALL
SECURITY FORCE UNITS WITH WHICH AN INDIVIDUAL FOR WHOM
THERE IS CREDIBLE EVIDENCE OF HAVING COMMITTED SUCH
VIOLATIONS HAS BEEN A MEMBER, FROM THE DATE OF THE ALLEGED
OFFENSE TO THE PRESENT. FOR EXAMPLE, IF A SECURITY FORCE
MEMBER ALLEGEDLY COMMITTED A VIOLATION WHILE ATTACHED TO
UNIT X, BUT HAS SINCE BEEN TRANSFERRED TO UNIT Y, POST
SHOULD ADVISE OF THAT PERSON'S RELATIONSHIP WITH BOTH
UNITS. POST SHOULD PROVIDE AN ADEQUATE DESCRIPTION OF THE
SECURITY FORCE ORGANIZATION, INCLUDING ITS STRUCTURE AND
HIERARCHY, AND INSTITUTIONAL RELATIONSHIPS INVOLVED.

¶27. EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBERS
TO JUSTICE: FOR PURPOSES OF THE STATE LEAHY AMENDMENT,
RELEVANT LEGISLATIVE HISTORY CONTAINS LANGUAGE REGARDING
THE NEED FOR RESPONSIBLE INDIVIDUALS TO "FACE IMPARTIAL
CRIMINAL PROSECUTION OR APPROPRIATE AND TIMELY
DISCIPLINARY ACTION IN ACCORDANCE WITH LOCAL LAW."
ORDINARILY, SOME CLEAR ACTION NEEDS TO OCCUR, E.G.,
INVESTIGATIONS, FORMAL ADMINISTRATIVE OR LEGAL PROCEEDING
UNCLASSIFIED

PAGE 19 STATE 034981 061828Z
AGAINST THE INDIVIDUAL OR INDIVIDUALS IN QUESTION, OR
OTHER ACTIONS DEMONSTRATING THE HOST NATION IS PROCEEDING
TO BRING THE RESPONSIBLE PERSONS TO JUSTICE. THE MERE
TRANSFER FROM A UNIT OF AN INDIVIDUAL ACCUSED OF HAVING
COMMITTED HUMAN RIGHTS ABUSES DOES NOT, IN AND OF ITSELF,
CONSTITUTE THE NECESSARY EFFECTIVE MEASURES TO BRING THE
RESPONSIBLE MEMBER(S) OF THE UNIT TO JUSTICE. AN
INVESTIGATION/PROSECUTION PROCESS NEED NOT HAVE BEEN
CONCLUDED, NOR IS IT NECESSARY THAT THE PROCESS LED TO A
CONVICTION. ON THE OTHER HAND, THE MERE OPENING OF A
FORMAL INVESTIGATION DOES NOT, IN AND OF ITSELF,
CONSTITUTE "EFFECTIVE MEASURES."

THE REALISTIC CHANCE FOR SUCCESSFUL AND IMPARTIAL
CONCLUSION OF THE INVESTIGATION, LEADING TO IMPARTIAL
TRIAL AND APPROPRIATE PUNISHMENT IF CONVICTED, SHOULD BE
ASSESSED. THE INSTITUTIONAL HISTORY OF THE HOST NATION
MILITARY AND CIVILIAN JUSTICE SYSTEM IS RELEVANT IN MAKING
THE NECESSARY JUDGMENTS.

NOTE THAT THE DOD LEAHY PROVISION IS WORDED DIFFERENTLY
THAN THE STATE LEAHY PROVISION ON THIS POINT, THE FORMER
REQUIRING THAT "ALL NECESSARY CORRECTIVE STEPS HAVE BEEN
TAKEN" BEFORE DOD-FUNDED TRAINING INVOLVING A UNIT THAT
HAS TRIGGERED LEAHY CAN TAKE PLACE. THIS PHRASE IS NOT
DEFINED IN THE LEGISLATION.

¶28. POST SHOULD DESIGNATE AN EMBASSY POINT OF CONTACT FOR
THE LEAHY AMENDMENTS. AS HUMAN RIGHTS VIOLATIONS ARE ONE
AMONG A SERIES OF OTHER CRITERIA THAT ARE TAKEN INTO
CONSIDERATION BEFORE PROVIDING ASSISTANCE (E.G., COUNTER
UNCLASSIFIED

PAGE 20 STATE 034981 061828Z
NARCOTICS, CORRUPTION), DEPARTMENT SUGGESTS THAT EMBASSY
POC BE IN A POSITION TO COORDINATE A COMPREHENSIVE REVIEW
WITH ALL RELEVANT MEMBERS OF THE COUNTRY TEAM.

¶29. AGENCIES OTHER THAN DOD (E.G., DEA, JUSTICE)

RESPONSIBLE FOR IMPLEMENTING FOAA-FUNDED PROGRAMS WITH SECURITY FORCES SHOULD ENSURE SIMILAR COORDINATION AND COMMUNICATION WITH THE COUNTRY TEAM IN ACCORDANCE WITH THIS GUIDANCE.

¶30. DEPARTMENT WILL WORK WITH POSTS TO ENSURE THAT NGOS THAT IMPLEMENT FOAA-FUNDED PROGRAMS WITH SECURITY FORCES ARE INSTRUCTED OF THE NEED TO ENSURE COMPLIANCE WITH LEAHY LIMITATIONS.

¶31. POC AT DEPARTMENT OF STATE IS CHRISTOPHER DUVALL, BUREAU OF POLITICAL-MILITARY AFFAIRS, 202-736-4019, DUVALLCF@STATE.GOV.

¶32. MINIMIZE CONSIDERED
POWELL

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